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EXAMINER	
KIDWELL, MICHELE M	
ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/899,808	Applicant(s) PRICE ET AL.	
	Examiner Michele Kidwell	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-37, 51 and 52 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-37 and 51-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Interpretation

With reference to claim 1, the examiner notes that the interpretation given to the claim language is that the two independently movable tab members are independent of each other.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15 – 19 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Burkhard (EP 0 233 704 B1).

With reference to claim 15, Burkhard discloses an absorbent garment comprising a body panel having a length defined along a longitudinal direction and opposite side edges (figure 1) and a fastening member comprising at least two independently movable tab members each having an engagement portion releasably and refastenably engaging said body panel (col. 11, lines 6 – 14 and figure 2), wherein the tab members extend laterally inward in the same direction from said side edge of said body panel (shown as a sinusoidal pattern in figures 4 and 6 – 7 or the extension of each tab inward as shown in figure 2) and wherein said tab members are offset in the longitudinal

Art Unit: 3761

direction (figure 1 shows the tab members offset from the elastics [18] in the longitudinal direction), each of the engagement portions having an engagement length (col. 10, lines 17 – 19) wherein the sum of the engagement lengths is at least about 20% of the body panel length as set forth in col. 6, lines 29 – 31 and col. 7, lines 44 – 48.

Burkhard discloses that absorbent core has a length of approximately 16 inches when measured along the longitudinal centerline (col. 6, lines 29 – 31). Burkhard also discloses that the backsheet extends beyond the absorbent core at least .5 inches in col. 7, lines 44 – 48. Since the topsheet and backsheet are coextensive (col. 4, lines 47 – 51), Burkhard establishes the total length of the body panel as 16.5 inches. Additionally, Burkhard states that the fastening tapes have a longitudinal width of 4 inches at the first and second sides of the diaper (col. 10, lines 17 – 22) totaling a sum of 8 inches. Therefore, the sum of the engagement lengths is approximately 50% of the body panel length.

With reference to claim 16, Burkhard discloses an invention wherein the sum of the engagement lengths is less than about 90% of the body panel length as set forth in col. 6, lines 29 – 31; col. 4, lines 47 – 51 and col. 10, lines 17 – 22.

Burkhard discloses that absorbent core has a length of approximately 16 inches when measured along the longitudinal centerline (col. 6, lines 29 – 31). Burkhard also discloses that the backsheet extends beyond the absorbent core at least .5 inches in col. 7, lines 44 – 48. Since the topsheet and backsheet are coextensive (col. 4, lines 47 – 51), Burkhard establishes the total length of the body panel as 16.5 inches. Additionally, Burkhard states that the fastening tapes have a longitudinal width of 4

Art Unit: 3761

inches at the first and second sides of the diaper (col. 10, lines 17 – 22) totaling a sum of 8 inches. Therefore, the sum of the engagement lengths is approximately 50% of the body panel length.

With reference to claim 17, Burkhard discloses an invention wherein the sum of the engagement lengths is between about 30% and about 80% of the body panel length as set forth in col. 6, lines 29 – 31; col. 4, lines 47 – 51 and col. 10, lines 17 – 22.

Burkhard discloses that absorbent core has a length of approximately 16 inches when measured along the longitudinal centerline (col. 6, lines 29 – 31). Burkhard also discloses that the backsheet extends beyond the absorbent core at least .5 inches in col. 7, lines 44 – 48. Since the topsheet and backsheet are coextensive (col. 4, lines 47 – 51), Burkhard establishes the total length of the body panel as 16.5 inches. Additionally, Burkhard states that the fastening tapes have a longitudinal width of 4 inches at the first and second sides of the diaper (col. 10, lines 17 – 22) totaling a sum of 8 inches. Therefore, the sum of the engagement lengths is approximately 50% of the body panel length.

With reference to claim 18, Burkhard discloses an invention wherein the sum of the engagement lengths is between about 40% and about 60% of the body panel length as set forth in col. 6, lines 29 – 31; col. 4, lines 47 – 51 and col. 10, lines 17 – 22.

Burkhard discloses that absorbent core has a length of approximately 16 inches when measured along the longitudinal centerline (col. 6, lines 29 – 31). Burkhard also discloses that the backsheet extends beyond the absorbent core at least .5 inches in col. 7, lines 44 – 48. Since the topsheet and backsheet are coextensive (col. 4, lines 47

Art Unit: 3761

– 51), Burkhard establishes the total length of the body panel as 16.5 inches.

Additionally, Burkhard states that the fastening tapes have a longitudinal width of 4 inches at the first and second sides of the diaper (col. 10, lines 17 – 22) totaling a sum of 8 inches. Therefore, the sum of the engagement lengths is approximately 50% of the body panel length.

As to claim 19, Burkhard discloses a front body panel (24) as set forth in figure 2.

With respect to claim 51, see figure 2.

Claims 15, 19 – 21, 23, 25 – 28, 32, 34 – 37 and 51 – 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooper (US 5,087,253).

With reference to claim 15, Cooper discloses an absorbent garment comprising a body panel having a length defined along a longitudinal direction and opposite side edges (figure 4) and a fastening member comprising at least two independently movable tab members each having an engagement portion releasably and refastenably engaging said body panel (col. 7, lines 35 - 43 and figure 4), wherein the tab members extend laterally inward in the same direction from one of the said side edges of said body panel and wherein the tab members are offset in the longitudinal direction, each of the engagement portions having an engagement length wherein the sum of the engagement lengths is at least about 20% of the body panel length as shown in figures 4 and 16 – 17.

Cooper shows a body panel disposed above reference character 58 in figure 4. The examiner contends that based on the length of the tab members in figure 4, the sum of the engagement lengths of those tab members is at least about 20% of the body panel length.

As to claim 19, Cooper discloses a body panel comprising a front body panel as shown under reference character 60 in figure 4.

With reference to claim 20, Cooper discloses the fastening member comprising a carrier member (the backing material to which the loop and/or hook material is attached as shown in figures 8 – 9) having a length (figure 4) and further comprising a rear body panel comprising a side edge having a length (area above reference character 58 in figure 4) secured to the side edge of the front body panel along a seam (86) having a length as shown in figure 10.

With respect to claims 21 and 34, Cooper discloses the length of the carrier member (identical to the length of the actual hooks and/or loops) is at least about 50% of the length of the seam as set forth in figures 4 and 10.

The seam as shown in figure 10 extends from the waist edge to the leg opening. If the same length is examined when the article is in its open configuration (figure 4), the assessment can be made that the length of the carrier member is more than 50% of the length of the seam.

As to claim 23, Cooper discloses the length of the carrier member (identical to the length of the actual hooks and/or loops) is at least about 50% of the length of the side edge of the rear body panel as set forth in figures 4 and 10.

As to claims 25 and 35, Cooper discloses the carrier member is fixedly secured to the rear body panel as set forth in col. 10, lines 26 – 33.

Regarding claims 26 and 36, Cooper discloses the front body panel comprising a pair of side portions each defining one of said opposite side edges and a landing member extending between the side portions, wherein the at least two engagement portions are releasably engaged with the landing member, and wherein the carrier member is fixedly secured to the side portions of the front body panel as set forth in col. 7, lines 59 – 58 and figures 4 and 7.

With reference to claims 27 and 37, Cooper discloses the front and rear body panels having substantially the same width as set forth in figure 4.

Regarding claim 28, Cooper discloses an absorbent garment comprising a body panel having a length defined along a longitudinal direction and opposite side edges (figure 4) and a fastening member comprising a carrier member (figures 8 – 9) defining at least two independently movable tab members extending laterally inward in the same direction from one of said side edges of the body panel (figures 4 and 7) and an engagement portion disposed on each of the tab members and wherein the tab members are offset in the longitudinal direction, wherein the engagement portions releasably and refastenably engage the body panel, (col. 7, lines 35 - 43), and wherein each of the engagement portions have an engagement length, wherein the sum of the engagement lengths is at least about 20% of the body panel length as shown in figure 4.

Art Unit: 3761

Cooper shows a body panel disposed above reference character 58 in figure 4. The examiner contends that based on the length of the tab members in figure 4, the sum of the engagement lengths of those tab members is at least about 20% of the body panel length.

As to claim 32, Cooper discloses a body panel comprising a front body panel, wherein the carrier member comprises a base portion (the backing material to which the loop and/or hook material is attached as shown in figures 8 – 9) wherein the tab members extend from the base portion (i.e., the hook and/or loop material attached directly to the backing material as shown in figures 8 – 9), and wherein the base portion has a length (figure 4) and further comprising a rear body panel comprising a side edge having a length (area above reference character 58 in figure 4) secured to one of said side edges of the front body panel along a seam (86) having a length (figure 10) wherein the length of the carrier member (identical to the length of the actual hooks and/or loops) is at least about 50% of the length of the seam as set forth in figures 4 and 10.

Regarding claims 51 and 52, see figure 19.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16 – 18, 22, 24 and 29 – 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper (US 5,087,253).

The difference between Cooper and claims 16 – 18 is the provision that the sum of the engagement lengths is less than about 90%, between about 30 – 80%, or between about 40 – 60%, respectively.

It would have been obvious to one of ordinary skill in the art to modify the sum of the engagement lengths to provide the claimed ranges since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only a level of ordinary skill in the art.

The difference between Cooper and claims 22, 29 and 33 is the provision that the length of the carrier member is at least about 90% of the length of the seam.

It would have been obvious to one of ordinary skill in the art to provide a carrier member that is at least about 90% of the length of the seam since it has been held that where the general conditions of a claim are disclosed in the prior art (i.e., a carrier member that has a length of at least about 50% of the length of the seam), discovering the optimum or workable ranges involves only a level of ordinary skill in the art.

The difference between Cooper and claim 24 is the provision that the length of the carrier member is at least about 90% of the length of the side edge of the rear body panel.

It would have been obvious to one of ordinary skill in the art to provide a carrier member that is at least about 90% of the length of the side edge of the rear body panel since it has been held that where the general conditions of a claim are disclosed in the

Art Unit: 3761

prior art (i.e., a carrier member that has a length of at least about 50% of the length of the side edge of the rear body panel), discovering the optimum or workable ranges involves only a level of ordinary skill in the art.

The difference between Cooper and claims 29 – 31 is the provision that the sum of the engagement lengths is less than about 90%, between about 30 – 80%, or between about 40 – 60%, respectively.

It would have been obvious to one of ordinary skill in the art to modify the sum of the engagement lengths to provide the claimed ranges since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only a level of ordinary skill in the art.

Response to Arguments

Applicant's arguments filed July 15, 2004 have been fully considered but they are not persuasive.

In response to the applicant's argument that Burkhard does not disclose two independent refastenable tapes that extend laterally in the same direction from one of a pair of opposite side edges of the body panel, the examiner disagrees. In figure 2, Burkhard shows each of the independent refastenable tapes extending laterally in the same direction (i.e. toward the front or rear of the article) from one of a pair of opposite side edges of the body panel.

Regarding the applicant's argument that the fasteners 72/76 and 70/74 engage each other rather than the body panel, the examiner contends that in engaging one another, the fasteners, in turn, engage the body panel.

The examiner also notes that in figures 16 – 17 of Cooper, the fasteners are considered as positioned longitudinally offset from specific areas such as from the stitching (220).

With respect to the applicant's argument regarding a laterally inward tab member, the examiner considers the language as relative, and contends that the tab member of Burkard may be considered as laterally inward when in a fixed position as in figure 2. The same holds true with the Cooper reference in view of figure 19.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3761

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

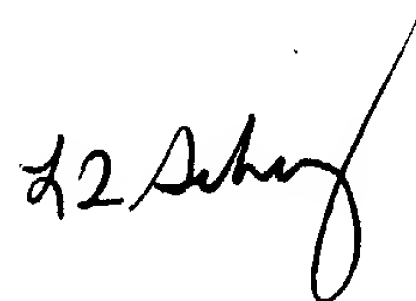
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 703-308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michele Kidwell
Examiner
Art Unit 3761



Larry I. Schwartz
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